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FOR THE NINTH CIRCUIT

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RANCHERS CATTLEMEN ACTION
LEGAL FUND UNITED
STOCKGROWERS OF AMERICA,
Plaintiff/Appellee,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE, Animal and Plant
Health Inspection Service, *et al.*,
Defendants/Appellants.

No. 05-35264

D.C. No. CV-05-06-BLG-RFC
District of Montana, Billings

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MAY 10 2005

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**REPLY OF THE GOVERNMENT OF CANADA TO R-CALF'S
OPPOSITION TO MOTIONS FOR LEAVE TO FILE *AMICUS* BRIEFS**

The Government of Canada ("Canada") respectfully submits this
Reply to Appellee Ranchers Cattlemen Action Legal Fund United Stockgrowers of
America's ("R-CALF") Opposition to Motions for Leave to File *Amicus* Briefs
("Opp."). R-CALF asks this Court to reject the amicus brief proffered by Canada
and, in doing so, to depart from its established practice of accepting relevant
amicus briefs in cases involving issues of public interest.¹ R-CALF fails, however,
to cite a single case where this Court, or any other court, rejected an amicus brief

¹ See, e.g., *Miller-Wohl Co. v. Comm'r of Labor & Indus.*, 694 F.2d 203, 204
(9th Cir. 1982) (noting the value of *amici* in cases of general public interest
and in supplementing the efforts of counsel).

filed by a foreign government.² R-CALF fails, moreover, to acknowledge that Canada's brief provides a unique and important perspective in a case *solely* involving Canada's status under United States law in the trade of Canadian cattle and other animals and related products.³ The district court's preliminary injunction, now on review, is based largely on the unfounded premise that Canada's public and animal health safeguards do not adequately protect consumers in the United States from exposure to BSE-contaminated beef. Because no party can speak with as much authority on Canada's safeguards and the status of the two new cases of BSE in Canadian cattle confirmed in January 2005, Canada has a

² Indeed, courts routinely allow Canada and other foreign governments to file amicus briefs in cases where the foreign government's practices are at issue. *See, e.g., Credit Suisse v. United States Dist. Court for the Cent. Dist. of Cal.*, 130 F.3d 1342 (9th Cir. 1997) (accepting amicus brief of the Swiss Government in case involving Swiss banking practices); *Gerritsen v. De La Madrid Hurtado*, 819 F.2d 1511, 1514 n.3 (9th Cir. 1987) (granting amicus status to Mexican Consul because it is a "proper exercise of [this Court's] discretion" to "promote[] comity"); *Natural Res. Def. Council v. Nuclear Regulatory Comm'n*, 647 F.2d 1345, 1348 (D.C. Cir. 1981) (discussing the "cross-jurisdictional" issues addressed in the amicus brief of the Philippines Government, including the "nuclear regulatory and review procedures mandated by Philippines law").

³ The Final Rule at issue, now preliminarily enjoined, places Canada in a "minimal risk" trade category. The Rule lifts prohibitions on the importation of certain ruminants and ruminant products and byproducts from Canada that were imposed after Canada detected its first case of Bovine Spongiform Encephalopathy ("BSE") in 2003. *See* "Bovine Spongiform Encephalopathy; Minimal-Risk Regions and Importation of Commodities, Part III," 70 Fed. Reg. 460 (Jan. 4, 2005).

significant contribution to offer this Court. Despite Canada's unique role in this controversy and this Court's recognition of the need to grant foreign sovereigns amicus status to "promote[] comity," *Gerritsen*, 819 F.2d at 1514 n.3, R-CALF has opposed Canada's filing based on two contentions that lack merit.

First, R-CALF argues that this Court should reject Canada's brief because it does not "significantly expand upon" the presentation by Appellants United States Department of Agriculture, *et al.*, ("USDA"), and therefore would not "substantially assist" this Court. Opp. at 11. As a preliminary matter, R-CALF has misstated the standard for this Court to accept an amicus brief. Rule 29 of the Federal Rules for Appellate Procedure provides that a proposed amicus must state its interest and explain "why the matters asserted are relevant to the disposition of the case." Fed. R. App. P. 29(b)(2). Canada has satisfied this requirement. *See generally* Canada Motion for Leave to File Brief *Amicus Curiae* ("Canada Motion").

Although Canada's brief naturally addresses some of the same issues as USDA's brief, it also highlights additional arguments and includes many different factual points and citations. More fundamentally, it addresses the topics with the voice of the Canadian Government, and thus provides a perspective that substantiates and enhances – not "duplicates" – USDA's presentation. R-CALF utterly fails to appreciate that, as USDA noted in its opening brief, "[t]he United

States and Canada *have cooperated closely* in pursuing the shared goal of avoiding introduction and dissemination of BSE,” and that “Canada has taken numerous steps to ensure that importation of its cattle and beef can resume without presenting any threat to health and safety.” Brief for Appellants, No. 05-35264, at 60 (Apr. 14, 2005) (emphasis added). For these reasons, Canada does not merely have a special interest justifying its say in this case; rather, its presentation *does* “substantially assist” this Court in evaluating the flaws in the district court’s decision.⁴

Second, R-CALF argues that Canada’s brief is “redundant” with the amicus briefs proffered by the Canadian Cattlemen’s Association (“CCA”) and Alberta Beef Products (“ABP”). Opp. at 14 (stating that Canada, CCA, and ABP “[a]t a minimum ... should be required to file a joint brief”). This argument is based on R-CALF’s serious mischaracterization of Canada’s brief as addressing the economic interests represented by CCA and ABP. In fact, Canada’s brief does

⁴ R-CALF’s support for its “duplication” arguments are inapposite and, in particular, have no relationship to the cross-border considerations in this case. For example, in the unreported case *Abu-Jamal v. Horn* cited throughout R-CALF’s Opposition, the district court rejected four amicus briefs because the parties’ filings already consisted of 750 pages (in comparison to USDA’s 60-page brief in this case) and, among other things, the amicus briefs were “unhelpful,” “too long, untimely, and lacking proper foundation.” No. Civ. A. 99-5089, 2000 WL 1100784, at *1-2, 5 (E.D. Pa. Aug. 7, 2000).

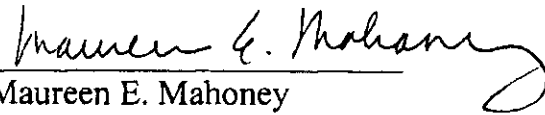
not address any economic interests, but rather is tailored to address only the Canadian health and safety procedures at issue in the Final Rule.

R-CALF's suggestion that this Court should require Canada to file a joint brief with two trade organizations is equally misplaced. Although Canada supports the amicus briefs filed by CCA and ABP, Canada has a unique *sovereign* perspective that it presents in its brief, together with the most current scientific information from its government agencies. It is absurd for R-CALF to suggest that Canada should be forced to submit a joint brief solely for R-CALF's convenience, particularly when Canada is different from any other proposed amicus. R-CALF even concedes as much in recognizing that "*save for Canada . . . , every organization proposing to file an amicus brief . . . is related.*" Opp. at 16 (emphasis added).

For these reasons, and because Canada's brief does not prejudice R-CALF in any way (*see* Canada Motion at 8), Canada respectfully asks this Court to grant its motion and accept the proposed amicus brief.

DATED: May 9, 2005

Respectfully submitted,



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CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure, I hereby certify that one (1) true copy of the document described as:

**REPLY OF THE GOVERNMENT OF CANADA TO R-CALF'S
OPPOSITION TO MOTIONS FOR LEAVE TO FILE *AMICUS* BRIEF**

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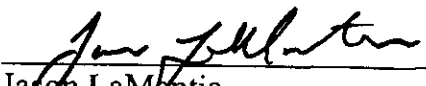
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